

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 47

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD D. JOB

Appeal No. 2001-2509
Application 08/603,331

ON BRIEF

Before KIMLIN, LIEBERMAN and DELMENDO, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 24-28, 30-32, 37-39 and 45. Claims 43 and 44 have been allowed by the examiner. Claims 33-36 and 40-42, the other claims remaining in the present application, have been withdrawn from consideration.

Claim 24 is illustrative:

24. A monolithic device, being the same material throughout, said device comprising a body having a top and a bottom, two sides, a front and a back, wherein said bottom opposes said top, said body having a handle

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at said top and a flexible straight edge at said bottom, said handle being directly above said flexible straight edge, wherein, at all points at a given height above said bottom, the shortest distance between said front and said back is less than the shortest distance between said two sides.

In the rejection of the appealed claims, the examiner relies upon the following references:

Tupper	2,900,656	Aug. 25, 1959
Loos	4,297,761	Nov. 03, 1981
Priore	4,970,749	Nov. 20, 1990
Ballantyne (Austrialian Patent)	30,518	Dec. 03, 1930

Appellant's claimed invention is directed to a monolithic device comprising a handle and a flexible straight edge blade for moving flowable materials. According to the present specification, scrapers or squeegees of the prior art present problems by having separate blade and handle sections. Appellant states that "[o]ften the blade, especially when wet and slippery, slips in the slot" (page 1 of the specification, last paragraph).

The presently claimed device, on the other hand, "is a monolithic scraper or squeegee having tapered or thinned edge so as to be flexible to conform to surface irregularities" (page 2 of the specification, third paragraph).

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Appealed claims 24-28, 32, 38, 39 and 45 stand rejected under 35 U.S.C. § 102 as being anticipated by Ballantyne. Claims 30 and 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ballantyne. Claim 37 stands rejected under 35 U.S.C. § 103 as being unpatentable over Ballantyne in view of Tupper. In addition, claims 24, 25, 31 and 45 stand rejected under 35 U.S.C. § 102 as being anticipated by Loos. Also, claims 24, 25, 27, 28, 31, 32, 38 and 45 stand rejected under 35 U.S.C. § 102 as being anticipated by Priore.

Appellant submits at page 6 of the principal brief that claims 24, 26-28, 31, 32 and 39 stand or fall together, as do claims 25 and 38. Also, appellant states that claims 30, 37 and 45 are to be considered independently.

We have thoroughly reviewed each of appellant's arguments for patentability. However we are in substantial agreement with the examiner's application of the prior art and disposition of the arguments raised by appellant. Accordingly, inasmuch as we find that the examiner's rejections are free of reversible error, they will be sustained.

We consider first the examiner's rejection of claims 24-28, 32, 38, 39 and 45 under § 102 over Ballantyne. The principal

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argument advanced by appellant is that Ballantyne does not disclose the claimed monolithic device since the device of Ballantyne has a reinforcing wire in its interior. Appellant accurately points out that Ballantyne indicates that the rubber and reinforcement wire are molded together. In particular, Ballantyne discloses that "[t]he implement consists of solid rubber moulded about a reinforcement of suitable material" (column 1, lines 14-16).

We agree with the examiner that the presence of reinforcement wire in the device of Ballantyne does not disqualify it as monolithic as the term "monolithic" is used in appellant's specification and defined in appellant's Exhibit A. First, appellant uses the term monolithic to describe a device whose handle and blade are formed out of one, not separate materials, but nowhere does appellant's specification state or suggest that the material of the device should be uniform throughout its interior. Secondly, the second definition given for "monolithic" in the dictionary of appellant's Exhibit A and the most pertinent here is "cast as a single piece". Manifestly, the device of Ballantyne is cast as a single piece, i.e., the

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device which exits the mold is a single, unitary rubber device. Appellant has not produced any factual support for the argument that because the device of Ballantyne is made of two materials, wire and rubber, it is not monolithic (page 6 of principal brief, last paragraph).

As for the examiner's rejection of claim 30 under § 103 over Ballantyne, we are in complete agreement with the examiner that one of ordinary skill in the art would have found it obvious to determine the particular durometer value which optimizes the particular application of the device. It is well settled that the determination of a result effective variable is a matter of obviousness for one of ordinary skill in the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). Regarding claim 31, the examiner has properly not addressed the features of this claim since appellant, as noted above, does not group claim 31 separately in the brief. In any event, we find that it would have been prima facie obvious for one of ordinary skill in the art to employ a conventional thermoplastic material as the blade in a squeegee or scraper-like device.

We also concur with the examiner that it would have been obvious for one of ordinary skill in the art to utilize the anti-

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static material of Tupper in the rubber device of Ballantyne to render the device anti-static as required by claim 37.

We further concur with the examiner that Ballantyne describes the orientation of the thickened section above the straight edge recited in claim 25, at least to the unspecified extent disclosed in the present specification. Also, as pointed out by the examiner, the Exhibit A referred to by appellant provides a dictionary meaning for the term "monolithic" but does not demonstrate that "the thickened section is not parallel to the flexible straight edge", as argued at page 9 of the principal brief. Apparently, appellant did not submit the Exhibit mentioned in the brief.

Regarding separately argued claim 45, due to the relative nature of the claim language "so that the device may be held easily", we agree with the examiner that the device of Ballantyne meets the claim limitation. While appellant is correct in stating that the function of a claim feature must be considered in determining its patentability, there is no definition in the present specification of the limitation "easily" such that the claimed device is distinguishable over the device of Ballantyne.

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Concerning the examiner's § 102 rejection over Loos, appellant has not refuted the examiner's factual finding and analysis based upon interpreting the thickness of blade 18 to define its front and back.

Turning to the examiner's rejection under § 102 over Priore, we are in complete agreement with the examiner that the "semi-rigid" quality of Priore's blade meets the claim requirement of being "flexible". Quite simply, we perceive no meaningful distinction between materials which are semi-rigid and flexible.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the rejections based on § 103.

In the event of further prosecution of the subject matter at bar, such as by way of a continuing application, we strongly recommend that the examiner consider a rejection under § 103, as well as § 102, over Ballantyne under the rationale that it would have been obvious for one of ordinary skill in the art to eliminate the reinforcing wire of Ballantyne along with its attendant function. In re Thompson, 545 F.2d 1290, 1294, 192

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USPQ 275, 277 (CCPA 1976); In re Kuhle, 526 F.2d 553, 556, 188
USPQ 7, 9 (CCPA 1975); In re Marzocchi, 456 F.2d 790, 793, 173
USPQ 228, 229-30 (CCPA 1972); In re Larson, 340 F.2d 965, 969,
144 USPQ 347, 350 (CCPA 1965).

In conclusion, based on the foregoing, and the reasons
well-stated by the examiner, the examiner's decision rejecting
the appealed claims is affirmed.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
PAUL LIEBERMAN)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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ROMULO DELMENDO)	
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